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Laporte v. Garcia

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Laporte v Garcia
2022 NY Slip Op 22126
Decided on April 11, 2022
Civil Court Of The City Of New York, Bronx County
Shahid, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on April 11, 2022

Civil Court of the City of New York, Bronx County

<p>Anthony Laporte, Petitioner,</p> <p>against</p> <p>Katherine Garcia, Respondent.</p>
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Index No. L & T 001358/21

Attorney for Petitioner: Jordan J. Tapia, Esq., Moss & Tapia Law, LLC

Attorney for Respondent: Alberto Moises Gonzalez, Esq., Mobilization For Justice, Inc.

Omer Shahid, J.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of Petitioner's Motion to Vacate the E.R.A.P. Stay (Motion No.1 on N.Y.S.C.E.F.):

Papers

Numbered

Notice of Motion (Motion # 1 on N.Y.S.C.E.F.) 1

Affirmation in Opposition (Entries 9-11 on N.Y.S.C.E.F.) 2

Petitioner, the primary tenant, commenced this holdover proceeding seeking possession of 828 E. 149th Street, Apt. 901, Bronx, NY 10455 (the "subject premises") from Respondent. Respondent obtained counsel and a written answer was filed on N.Y.S.C.E.F. on February 11, 2022.

On the February 15, 2022 appearance, Respondent, through counsel, informed the court that she filed an application for the Emergency Rental Assistance Program ("E.R.A.P."). The matter was placed on the court's E.R.A.P. administrative calendar, pending determination of eligibility, pursuant to the stay imposed by Part BB, Subpart A, § 8 of Chapter 56 of the Laws of 2021 (the "E.R.A.P. Statute") as amended by Part A, § 4 of Chapter 417 of the Laws of 2021 (the "Act"). On February 22, 2022, Petitioner filed the instant motion on N.Y.S.C.E.F. seeking to vacate the stay and the court calendared the motion with the return date of March 15, 2022. Respondent filed opposition papers on N.Y.S.C.E.F. on March 11, 2022. On the March 15, 2022 appearance, the motion was marked submitted for decision.

Petitioner seeks an order vacating the E.R.A.P. stay on the ground that the instant matter is a holdover proceeding and not a nonpayment proceeding. Petitioner also maintains that he has no intention of accepting any E.R.A.P. funds that may issue on Respondent's behalf and will not participate in the process because he seeks possession.

Respondent opposes the motion. Respondent argues that the E.R.A.P. stay is applicable to holdover proceedings and not restricted to only nonpayment proceedings. Respondent also argues that a request of use and occupancy can trigger the E.R.A.P. stay and that a landlord's participation in the process is irrelevant. Lastly, Respondent maintains that an E.R.A.P. stay here is appropriate as Respondent has an illusory tenancy based upon Respondent's allegation that she has occupied the subject premises by herself since September 14, 2021.

Respondent is correct in arguing that the E.R.A.P. stay applies to holdover proceedings as well. Section 8 of Part BB, Subpart A of the E.R.A.P. Statute as amended by Part A, Section 4 of the Act provides in pertinent part: "[I]n *any pending eviction proceeding*, whether filed prior to, on, or after the effective date of this act, against a household who has applied or subsequently applies for benefits under this program or any local program administering federal emergency rental assistance program funds to cover all or part of the arrears claimed by the petitioner, *all proceedings* shall be stayed pending a determination of eligibility." (Emphasis supplied.) Petitioner's argument that the E.R.A.P. stay is restricted to only nonpayment proceedings is not supported by the plain reading of the statute. The language "any pending eviction proceeding" incorporates both nonpayment and holdover

proceedings and does not make a distinction between them when it concerns the stay. The exception to this language appears in Section 9-A of the E.R.A.P. Statute which concerns proceedings where respondents are committing nuisance or objectionable conduct, which is not the case here.

While the determination of eligibility rests with the Office of Temporary and Disability Assistance ("O.T.D.A."), determining whether a stay applies or should be lifted, based upon the particular circumstances of a proceeding, is in the court's realm. [*See 2986 Briggs L.L.C. v. Evans*, 74 Misc 3d 1224\(A\)](#), 2022 NY Slip Op. 50215(U) (Civ. Ct., Bronx Co. 2022). Since an E.R.A.P. stay can apply in a holdover proceeding and the court has the authority to continue or lift the stay, the question posed is whether the specific facts in this proceeding warrant a vitiation of the E.R.A.P. stay. The court answers that question in the negative.

Section 8 of the E.R.A.P. Statute, as quoted above, states that a proceeding shall be stayed pending determination of eligibility if a "household" applies for the program funds to pay for all or part of the arrears claimed by a petitioner. Pursuant to Section 5(1)(a)(i) of the E.R.A.P. Statute, a "household" is eligible for the program if it "is a tenant or occupant obligated to pay rent in their primary residence in the state of New York." Section 2(7) of the E.R.A.P. Statute defines "occupant" the same as R.P.L. § 235-f which defines that term as "a person, other than a tenant or a member of a tenant's immediate family, occupying a premises with the consent of the tenant or tenants." Furthermore, Section 2(9) of the E.R.A.P. Statute defines "rent" the same as R.P.A.P.L. § 702 which defines it, in pertinent part, as: "the monthly or weekly amount charged in consideration for the use and occupation of a dwelling pursuant to a written or oral rental agreement." And, finally, Section 2(10) of the E.R.A.P. Statute defines "rental arrears" as unpaid rent accruing on or after March 13, 2020.

Here, Respondent, as Petitioner's roommate, is an "occupant" within the meaning of the E.R.A.P. Statute. While it is this court's opinion that a claim for "use and occupancy," by itself, would not trigger the E.R.A.P. stay, Respondent shows that she has had a rental obligation to pay rent to Petitioner. Respondent attaches a letter from Petitioner to her opposition papers as "Exhibit A." The letter, dated July 14, 2021, states that Petitioner has been a leaseholder at the subject premises, a two-bedroom apartment, since 2018. The letter goes on to state that he accepts Respondent as a roommate and that Respondent will move into the subject premises on [*2] July 30, 2021. The letter sets the following arrangement between the parties: the overall monthly rent is \$1,600.00 per month but Respondent will pay Petitioner \$800.00 per month in her capacity as a roommate. Respondent will pay Petitioner a security deposit of \$800.00 and a first month's rent of \$800.00 (\$1,600.00 total) on the move-

in date. In exchange, Petitioner will grant Respondent access to the living room, bathroom, and kitchen. Petitioner has not disputed the authenticity of this letter. Furthermore, Petitioner has made a claim for rental arrears, besides use and occupancy, in the petition. The petition also acknowledges that there is a rental agreement between the parties. As stated above, Section 8 of the E.R.A.P. Statute provides that the court shall stay an eviction proceeding pending determination of eligibility when a household (which consists of Respondent as "occupant" in this instance) applies for program funds to pay all or part of the arrears claimed by a petitioner (as Petitioner does in his petition based upon the rental agreement between the parties). Respondent's application for program benefits qualifies for a stay pursuant to Section 8 of the E.R.A.P. Statute.

The fact that Petitioner does not want to participate in the program is not fatal to an E.R.A.P. stay. Petitioner "does not possess the right to dissolve the stay b[y] refusing to provide required input for the application to be complete." [*Carousel Props. v. Valle*, 74 Misc 3d 1217\(A\)](#), 2022 NY Slip Op. 50168(U) (Dist. Ct., 6th Dist., Suffolk Co. 2022). *See also* [*255 Skyline Drive Ventures L.L.C. v. Ryant*](#), LT-050014-20/RI (Civ. Ct., Richmond Co. 2021) (holding that based upon the particular circumstances of that case, the proceeding was subject to a stay pending determination of Respondents' E.R.A.P. application even if Petitioner desired not to participate in the process). To hold here that the E.R.A.P. stay would be vitiated based solely upon Petitioner's representation that he is only interested in possession would potentially make an E.R.A.P. stay inapplicable to almost all holdover proceedings where possession is the desired outcome for petitioners. That result is unsupported by the plain reading of the statute as discussed above.

The court need not address Respondent's illusory tenancy argument as no determination has been made on that issue yet.

Based upon the foregoing and the specific facts of this proceeding, Respondent is entitled to a stay of this proceeding pending O.T.D.A.'s determination of her E.R.A.P. application. Accordingly, Petitioner's motion to vacate the E.R.A.P. stay is denied in its entirety. The matter shall remain on the E.R.A.P. administrative calendar pending determination of eligibility. Once determination has been made, either party may reach out to the Part and request that the matter be restored back to the court's calendar.

The foregoing constitutes the decision and order of the court.

Dated: April 11, 2022

Bronx, NY

Omer Shahid, JHC

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